

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2034 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TETIYABHAI DEVNABHAI

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN MEHTA for Petitioners

MS HARSHA DEVYANI for Respondents No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/11/97

ORAL JUDGEMENT

1. On 15th October, 1997, this Court has ordered for issuance of notice to the petitioners No.1 and 2 for enhancement of the penalty. The office has not issued notice to the petitioners No.1 and 2 and now after hearing the learned counsel for the respondents I do not consider it necessary to issue notice to the petitioners No.1 and 2.

2. Challenge has been made by the petitioners by this special civil application to the order of the Deputy Collector dated 28th February, 1986 under which the fine imposed by the Mamlatdar upon the petitioners for cutting off 31 Vejaru trees and 216 Bamboo bunches without prior sanction or permission of the competent authority has been enhanced.

3. The learned counsel for the petitioners contended that the Deputy Collector has no power to revise the order of the Mamlatdar under which fine has been imposed upon the petitioners. It has next been contended that the appeal filed by the Forest Department before the Deputy Collector was barred by time. It has last been contended that while enhancing the amount of fine, no reasons have been given.

4. On the other hand, the counsel for the respondents contended that the Deputy Collector has the power to hear the appeal against the order of the Mamlatdar passed under the provisions of Saurashtra Felling of Trees (Infliction of Punishment) Act, 1951. It has next been contended that it is a case where the petitioners have cut the trees without prior permission of the competent authority and as such the Deputy Collector has not committed any error in enhancing the penalty. The petitioners have cut off 247 trees and as such it is a case where the Deputy Collector has acted fairly in enhancing the fine. The maximum fine should have been given but still a lenient view has been taken in case of the two petitioners.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. The learned counsel for the petitioners does not dispute that the petitioners have cut off the trees without the permission of the competent authority. Before cutting off the trees, the petitioners have to take the previous permission of the competent authority under the provisions of the Act aforesaid. The Mamlatdar has, after giving notice to the petitioners, found it to be a case where they have cut off the trees without any permission and as such the fine has been imposed. The respondent-Forest Department's officers were perfectly legal and justified to challenge that order. The petitioners' counsel is not correct to say that the revision application has been filed. The appeal is provided against the order of Mamlatdar and merely because in the order impugned it is mentioned as if it is a case of revision, it will not be taken to be a serious

matter to the extent where the order has to be quashed and set aside only on this ground. Otherwise also the petitioners' contention is not tenable in case it was a case of revision and not of the appeal. The limitation is prescribed for the appeal and not for the revision application. Merely because the appeal is admitted as a revision which may be an error committed by the Deputy Collector and when there is a specific provision for the appeal against the order of Mamlatdar, only on this mistake it cannot be said to be an order without jurisdiction. The revision is provided under section 10 to the Government and for which there is no limitation. Under section 4 of the Act, an appeal is provided against the order of the Revenue Officer passed under section 3.

7. Much emphasis has been laid by the learned counsel for the petitioners on the ground that the appeal was not filed within 30 days, but I do not find any merits in this contention also. Section 4 nowhere provides that appeal has to be filed within 30 days from the order of the Revenue Officer. What it says that appeal may be preferred within 30 days from the date of communication of such an order. The appeal has been filed on 10-10-1985 but the learned counsel for the petitioners is unable to show on which date the order of Mamlatdar was communicated to the Forest Department. For the contention that the appeal was time barred, necessary factual foundation has not been produced on the record of this special civil application and as such this contention cannot be accepted. It is true that the respondent-Deputy Collector has not recorded any reasons to enhance the fine but this Court cannot be oblivious of the fact that the petitioners have taken the law in their own hands and 247 trees have been cut off by them without the prior permission of the competent authority. In such matter, the Deputy Collector has not committed any error in case the fine has been enhanced. In such matters, the conduct of the petitioners has to be taken into consideration and where they have taken the law in their own hands to the extent of cutting off 247 trees without the permission, the fine has to be imposed to the maximum extent but still a lenient view has been taken in the case of two petitioners. Each case has to be decided on its own facts and the substance of the matter has to be considered. Merely because the reasons were not recorded this Court will not interfere in the matter where it is an admitted case that 247 trees were cut off by the petitioners without any prior permission of the competent authority.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged.

Interim relief, if any, granted by this Court stands vacated. However, it is made clear that the Forest Department may recover only the amount of fine which has been imposed by the Deputy Collector upon the petitioners.

zgs/-